

This is the accepted version of an article published in the European Journal of Social Security:

G McKeever and M Simpson, 'Worlds of welfare collide: implementing a European unemployment benefit scheme in the UK' (2017) 19(1) EJSS pp.21-44

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Version of record published 18 April 2017:

<http://journals.sagepub.com/doi/full/10.1177/1388262717699457>

WORLDS OF WELFARE COLLIDE: IMPLEMENTING A EUROPEAN UNEMPLOYMENT BENEFIT SCHEME IN THE UK

Submitted to European Journal of Social Security

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Key words: *social security; welfare state; unemployment; European Union; welfare capitalism*

The post-2007 financial crisis has brought renewed interest in a European Unemployment Benefit Scheme (EUBS) as a manifestation of solidarity between citizens of different member states and an economic stabiliser in the event of future asymmetric shocks. The EU-wide benefit would operate in tandem with existing national unemployment benefits. This creates challenges of compatibility given the diversity of approaches to social security within the Union, based on at least four philosophies of welfare: liberal, conservative, social democratic and southern European. This article examines potential legal, operational and political difficulties associated with marrying a EUBS that is at heart a conservative system of social insurance to the UK's liberal welfare state. Few legal obstacles exist and although the addition of a new, earnings-related benefit to an already complex mix of social protection would raise significant operational issues, these need not be insurmountable. However, fundamental ideological differences would have rendered the EUBS as proposed politically ill-matched with the UK even absent the June 2016 vote to leave the EU. A contributory income maintenance benefit is a poor fit with a residual, largely means-tested national system whose role is limited to offering protection against severe poverty while maintaining work incentives and minimising costs.

This article draws on a national feasibility study for EUBS in the UK, which was funded by Efttheia. An early version was presented at the Socio-Legal Studies Association annual conference, April 2016.

Word count: 7,972

Introduction

Despite the contention of the founding father of the European Union, Jacques Delors, that the creation of the single European market must be accompanied by the creation of a single “social area,”¹ to date the role of the Union in social protection has been limited to two main areas. EU law has required the removal of discriminatory measures, notably those that discriminate on the basis of gender, from national and occupational schemes.² Secondly, the extent to which EU citizens exercising their right to freedom of movement should be able to access the social security and social assistance systems of their host state has been incrementally expanded – and, perhaps, rolled back³ – through case law⁴ and legislation.⁵ However, subject to these constraints member states retain full competence for national systems of social protection. The principle that EU citizenship demands a “degree of financial solidarity” between nationals of different member states⁶ does not require harmonisation of provision or extend that solidarity to citizens living in other member states.

That is not to say that national systems are immune to external influences. European welfare states face similar challenges, such as sustainability of financing and the impact of an ageing society, and inevitably learned from their neighbours’ responses even before the Lisbon strategy extended the open method of coordination to social protection. The influence of the New Labour welfare-to-work agenda in the UK on claimant activation policies under Germany’s red-green coalition, which took office a year later, has been well documented.⁷ France’s *revenu minimum d’intégration* inspired the social assistance schemes devised by Spain’s autonomous communities from the late 1980s, which in turn influenced developments in Portugal and Italy.⁸ The European Code of Social Security,⁹ European Social Charter¹⁰ and

¹ Cited by Hervey, TK, ‘Social security: the European Union dimension’ in Harris, N, *Social security law in context* (Oxford: Oxford University Press, 2000) 233

² Court of Justice 17 May 1990, Case C-262/88 *Barber v Guardian Royal Exchange Assurance Group* [1990] 2 CMLR 513; for discussion, see Hervey (2000) fn.1; Wikeley, NJ and Ogus, AI, *The law of social security* (London: Butterworths, 2002) 601

³ Court of Justice 11 November 2014, Case C-333/13 *Dano v Jobcenter Leipzig* [2015] 1 CMLR 48; Peers, S (2000) ‘Benefits for EU citizens: a U-turn by the Court of Justice?’, *Cambridge Law Journal* 74(2) pp.195-8

⁴ Sieveking, K (1997) ‘Der Europäische Gerichtshof als Motor der sozialen Integration der Gemeinschaft’ *Zeitschrift für Sozialreform*, 43(3), pp.187-208; Conant, L (2008) ‘When courts decide: foreigners’ rights and social citizenship in Europe and the US’, *European Political Science*, 7, pp.43-51

⁵ Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

⁶ Court of Justice 20 September 2001, Case C-184-99 *Grzelczyk v Centre Public d’Aide Sociale d’Ottignies Louvain la Neuve* [2002] 1 CMLR 19 para 44

⁷ Mohr, K (2007) *Soziale Exklusion im Wohlfahrtsstaat: Arbeitslosensicherung und Sozialhilfe in Großbritannien und Deutschland*, Wiesbaden: VS Verlag für Sozialwissenschaften

⁸ Ferrera, M (2005) ‘Welfare states and social safety nets in southern Europe: an introduction’ in Ferrera, M (ed), *Welfare state reform in southern Europe: fighting poverty and social exclusion in Italy, Spain, Portugal and Greece*, London: Routledge

⁹ European Code of Social Security (Strasbourg, 18 April 1964, entry into force 17 March 1968, CETS048)

¹⁰ European Social Charter (Turin, 18 October 1961, entry into force 26 February 1965, ETS035); European Social Charter (revised) (Strasbourg, 3 May 1996, entry into force 1999, CETS 163)

ILO Convention 102¹¹ contain provisions on minimum standards for national social security/assistance systems and have been ratified by most member states.

A supranational European unemployment benefit has been advocated since the 1970s, but interest has been revived in the wake of the post-2007 economic crisis, reflecting a search for an automatic macro-economic stabiliser in the event of future asymmetric shocks as much as a desire for deepened expressions of solidarity between citizens.¹² The currency of this project remains valid, particularly for those member states that value the aspiration of economic and monetary union. The Committee on Employment and Social Affairs called for “a pilot project on the feasibility and added value of a European unemployment benefit scheme” (EUBS) in its Opinion on the Union budget for 2014.¹³ In a continuing search for economic stabilisers, this proposal represents a leading contender for a solution, and so needs to be examined in depth. There is a need to understand the relationship between this proposal and the political opposition to permanent transfers between member states that could characterise an ‘ever closer union’. There is a need to recognise the impact of the political ideology underpinning a EUBS model, which cuts across policy intent in the varying welfare traditions across Europe, in relation to both vertical and horizontal redistribution within member states. And there is further value in examining specifically how the development of a EUBS model sits in contrast to the erosion of a contributions-based social insurance model of social security and the increasingly residual nature of working age social security in the UK. A simulation of how various models of unemployment benefit might work at the European level was commissioned¹⁴ along with a discussion paper on the rationale for and challenges facing a EUBS.¹⁵ National studies of the legal and operational feasibility of EUBS were also carried out. Although many papers from the 1970s onward have assumed that any European unemployment benefit would form an integral part of monetary union,¹⁶ these feasibility studies included non-Eurozone states, with the authors contributing the UK case study. Completion of the studies was followed by

¹¹ International Labour Organisation Convention 102 – Social Security (Minimum Standards) Convention (Geneva, 28 June 1952, entry into force 27 April 1955)

¹² Beblavý, M, Marconi, G and Maselli, I (2015) ‘A European Unemployment Benefit Scheme: the rationale and the challenges ahead’, Brussels: Centre for European Policy Studies

¹³ Committee on Employment and Social Affairs (2013) ‘Opinion on the general budget of the European Union for the financial year 2014’ (2013/2145(BUD)), Brussels: European Parliament

¹⁴ Beblavý, M and Maselli, I (2014) ‘An unemployment insurance scheme for the euro area: a simulation exercise of two options’ (Special Report 98) Brussels: Centre for European Policy Studies

¹⁵ Beblavý & others (2015) fn.12

¹⁶ See Jara, HX and Sutherland H (2013) ‘The implications of an EMU unemployment insurance scheme for supporting incomes’ (RN3/2013), Brussels: European Commission; Andor, L (2015) ‘Completing the EMU – the next steps: towards greater resilience and stronger recovery capacity through developing unemployment insurance in the Eurozone’ (European Dialogue 2015, Brussels). Retrieved July 2016 from http://www.etui.org/content/download/20175/165450/file/Abschlusspanel+Andor+HB1500rz_EMU-Boeckler-short.pdf

publication of a synthesis report and conference supported by the Slovak Presidency of the European Council and the Commission.¹⁷

The case study was completed prior to the UK's European Union referendum of 23 June 2016 in which 52% voted to leave the EU. Within this 52% there are sub-state differences, with the majority vote in Scotland and Northern Ireland being to remain in the EU, while England and Wales had a majority leave vote, creating the prospect that Scotland in particular might seek to break the union with Britain in favour of maintaining the union with Europe.¹⁸ The political fallout of the referendum continues to unfold, making predictions uncertain and yet the case study provides clarity that, whatever the UK's future within Europe, it will not be a participant in any European unemployment benefit. As shall become apparent, even if the UK-wide vote had been to remain in the EU, it seems highly unlikely that the state would have agreed to be part of any such experiment in supranational social insurance, at least as envisaged at present. The referendum result does not relegate the findings to a mere historical curiosity: many of the factors identified as affecting the feasibility of EUBS in the UK are shared by other member states, and would be equally applicable to a Scottish state, independent of Britain but within the EU. Despite the impending 'Brexit', then, this article forms a useful case study of the difficulties inherent in establishing a European social security benefit, covering a single social risk, across multiple member states whose national systems work in a variety of different ways and emerge from radically different welfare traditions. These issues will have to be addressed if, as the Commissioner for Economic and Financial Affairs has suggested, one of the effects of 'Brexit' is to "shock" the remaining member states into completion of a genuine fiscal union, with EUBS as a first step.¹⁹

Two broad models of EUBS were examined in the simulation: reinsurance, referred to as 'equivalent EUBS', under which cash transfers take place between a supranational fund and member states when short term unemployment breaches a set threshold; and a harmonised benefit, or 'genuine EUBS', under which transfers are between individual workers and the supranational fund. The national feasibility studies were only concerned with genuine EUBS, which hence forms the focus of this article, albeit that academic and Ministerial interest in the reinsurance model remains.²⁰ The key questions for the study concerned any constitutional, legal, administrative and operational matters that might impact upon the implementation of EUBS in the member state concerned. The authors found few, if any, major legal barriers;

¹⁷ Coucheir, M (ed), Strban, G and Hauben, H (2016) 'Horizontal report on legal/operational feasibility of the EUBS at national level', Brussels: CEPS; Feasibility and added value of a European Unemployment Benefits Scheme, Brussels, July 2016

¹⁸ Carrell, S and Rankin, J (2016) 'Nicola Sturgeon to lobby EU members to support Scotland's remain bid', *The Guardian*, 25 June. Retrieved July 2016 from <https://www.theguardian.com/uk-news/2016/jun/25/sturgeon-seeks-urgent-brussels-talks-to-protect-scotlands-eu-membership>

¹⁹ Moscovici, P (2016) Keynote address (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels)

²⁰ See, for example, Gros, D (2016), Opening speech' (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels)

administrative and operational impediments were much more significant, yet need not be insurmountable. The major obstacles to EUBS in the UK were found to be political – as with the administrative issues identified, these primarily relate to the integration of a conservative system of social insurance into a liberal national system characterised by low replacement rates, widespread means testing and a highly disciplinary welfare-to-work regime.

1. Worlds of welfare capitalism

Esping-Andersen's classic typology sorts European welfare states according to the extent to which they deliver decommodification – the ability to “uphold a socially acceptable standard of living independently of market participation” – and produce or reproduce social stratification.²¹ Three categories are identified. The social democratic model, typical of the Scandinavian countries, delivers the highest level of decommodification, underpinned in part by the philosophy that relatively generous state welfare provision breeds equality by increasing the asking price of the “industrial reserve army,”²² thereby increasing the bargaining power of labour and curbing the power of employers. Universalism is a hallmark of the social democratic welfare state – although this approach does not maximise vertical redistribution, it does reduce proportional income gaps (especially when financed by progressive taxation) while maximising political buy-in by ensuring all are recipients.²³ The conservative (sometimes referred to as corporatist) welfare state is based on horizontally redistributive social insurance principles, prizing income maintenance and the avoidance of “nasty surprises” when the citizen falls victim to a social risk over the pursuit of equality. “Everyone will be taken care of,” but “no whole social group will ever be any better off, relative to any other whole social group, than before.”²⁴ It is to this group that the proposed EUBS belongs. The UK welfare state is associated with Esping-Andersen's liberal model. Also referred to as the residual model because of the limited role assigned to the state as a guarantor of welfare, this seeks to prevent severe poverty without reducing individual responsibility or displacing the market by providing excessively generous income replacement.

Subsequent analyses have identified additional or hybrid welfare state models, but nonetheless tend to feature the social democratic, conservative and liberal models in some form,²⁵ albeit that feminist critiques argue that this typology says more about the relationship between men, state and market than it does about that between women, family, state and market.²⁶ One of the

²¹ Esping-Andersen, G (1990) *The three worlds of welfare capitalism*, Cambridge: Polity Press, 37

²² Marx, K (1976) *Capital volume I*, London: Penguin

²³ Goodin, RE, Headey, B, Muffels, R and Dirven, H-J (1999) *The real worlds of welfare capitalism*, Cambridge: Cambridge University Press

²⁴ Goodin & others (1999) fn.23, 51

²⁵ Arts, WA and Gelissen, J (2010) ‘Models of the welfare state’ in Castles, FG, Leibfried, S, Lewis, J, Obinger, H and Pierson, C (eds), *The Oxford handbook of the welfare state*, Oxford: Oxford University Press

²⁶ Sainsbury, D (ed, 1994) *Gendering welfare states*, London: Sage; Orloff, AS (2010) ‘Gender’ in Castles, FG, Leibfried, S, Lewis, J, Obinger, H and Pierson, C (eds), *The Oxford handbook of the welfare state*, Oxford: Oxford University Press

most prevalent additions is the southern European model, which shares the conservative model's emphasis on contribution as a basis for entitlement and on income maintenance, but historically lacked a social assistance safety net, with the welfare provider of last resort officially the family but in practice often the grey economy.²⁷ Some convergence has occurred in recent decades. Conservative welfare states have tended to shorten eligibility periods for more generous insurance-based benefits and adopt a more coercive approach to movement back into employment.²⁸ Social democratic welfare states have likewise increased conditionality and sought to reduce costs.²⁹ Meanwhile, southern European welfare states have increased provision of social assistance, reducing reliance on familial support.³⁰

The UK welfare state has gone through distinct phases in the course of its development, in which different priorities have dominated. Accordingly, it has at times been claimed to fit uncomfortably into a liberal model whose true paradigms are situated outside Europe.³¹ Lowe identifies an era of "reluctant collectivism" in which Beveridge and like-minded liberal reformers, suspicious of the all-powerful state but convinced that assigning it a major role fighting the "five giants" that menaced inter-war society represented the lesser of two evils, proposed a model with strong social insurance and universal elements.³² This was followed by an era of "democratic socialism" with a greater role for universalism and a "New Right" era in which policy put its faith in the market as the most efficient service provider and guarantor of individual freedom and responsibility.³³ The literature is divided as to whether the New Right model has remained dominant since 1979 or was interrupted by a distinctive 'Third Way' characterised by a partial retreat from neoliberalism in favour of a "quiet redistribution" during the New Labour years.³⁴ Developments under the Cameron governments have placed the UK

²⁷ Ferrera, M (2010) 'The south European countries' in Castles, FG, Leibfried, S, Lewis, J, Obinger, H and Pierson, C (eds), *The Oxford handbook of the welfare state*, Oxford: Oxford University Press

²⁸ Dubet, F and V  r  tout, A (2001) 'Une « r  duction » de la rationalit   de l'acteur. Pourquoi sortir du RMI ?', *Revue fran  aise de sociologie*, 42(3), pp.407-36; Mohr (2007) fn.7; Bonoli, G and Palier, B (2001) 'How do welfare states change? Institutions and their impact on the politics of welfare state reform in western Europe' in Leibfried, S (ed), *Welfare state futures*, Cambridge: Cambridge University Press

²⁹ Goodin & others (1999) fn.23, 46; Kautto, M (2010) 'The Nordic countries' in Castles, FG, Leibfried, S, Lewis, J, Obinger, H and Pierson, C (eds), *The Oxford handbook of the welfare state*, Oxford: Oxford University Press; King, D and Ross, F (2010) 'Critics and beyond' in Castles, FG, Leibfried, S, Lewis, J, Obinger, H and Pierson, C (eds), *The Oxford handbook of the welfare state*, Oxford: Oxford University Press; Minas, R (2010) 'Social expenditures and public administration: are local social assistance costs in Sweden a matter of organisation?', *International Journal of Social Welfare*, 19(2), pp.215-224

³⁰ Laparra, M and Aguilar, M (1997) 'Social exclusion and minimum income programmes in Spain' in Rhodes, M (ed), *Southern European welfare states: between crisis and reform*, London: Frank Cass, 100; Ferrera (2005) fn.8, 11; Arriba, A and Moreno, L (2005) 'Spain – poverty, social exclusion and "safety nets"' in Ferrera, M (ed), *Welfare state reform in southern Europe: fighting poverty and social exclusion in Italy, Spain, Portugal and Greece*, London: Routledge, 179-187

³¹ Castles, FG and Mitchell, D (1993) 'Worlds of welfare and families of nations' in Castles, FG (ed), *Families of nations: patterns of public policy in western democracies*, Aldershot: Dartmouth

³² Beveridge, W (1942) *Social insurance and allied services* (Cmd 6404), London: HMSO, para 8

³³ Lowe, R (1999) *The welfare state in Britain since 1945*, London: Macmillan

³⁴ Lister, R (2001) 'Doing good by stealth: the politics of poverty and inequality under New Labour', *New Economy*, 8(2), pp.65-70; Stewart, A (2007) 'Who do we care about? Reflections on gender justice in a global market', *Northern Ireland Legal Quarterly*, 58(3), pp.358-374

more firmly within the liberal camp, sweeping away universal cash benefits³⁵ and further eroding the role of the contributory principle in out-of-work benefits;³⁶ although the role of contribution in the basic state pension has been slightly enhanced, a long running trend towards retrenchment in the provision of retirement incomes and choice in the use of the monies accrued continues.³⁷ If funding models for health and pre-18 education continue to be based on universalist principles, in England at least, provision of the actual services is increasingly in the hands of the market and the voluntary sector.³⁸ It is the attempt to introduce a new benefit founded on social insurance principles into an increasingly residual working age social security system that raises questions about the suitability – or political acceptability – of EUBS in the UK.

2. Towards a European Unemployment Benefit Scheme

The possibility of common social security provision as part of a wider expansion of supranational economic management featured in some of the earliest visions for the transformation of the European Economic Community from a free trading area to an economic and monetary union. Whereas the Werner report of 1970 envisaged a slow, phased process of economic integration,³⁹ the Marjolin report five years later advocated the establishment of a Community unemployment benefit as one of the “first steps towards economic and monetary union,” alongside a common industrial, energy, capital market and budgetary policy. The report notes that in successful federal states social security benefits are one of a package of “automatic mechanisms which offset fluctuations in economic activity” at regional level.⁴⁰ Although the authors conclude that such wide-ranging policy coordination could not be achieved within the envisaged five year time-scale, and would probably be impossible in the context of a Community that at the time lacked the democratic legitimacy of a directly elected Parliament,⁴¹ the report advocates the creation of a common unemployment benefit fund. The role of taxes and social security benefits in “cushioning short-term and cyclical fluctuations” is similarly noted in the 1977 MacDougall report, which identifies the Community’s limited budget and

³⁵ Finance Act 2012 c18 s8; sch 1

³⁶ Welfare Reform Act 2012 c5 s51

³⁷ Pensions Act 2014 c19 s2-3; Pension Schemes Act 2015 c8 part 4

³⁸ Academies Act 2010 c32; Education Act 2011 c21; Health and Social Care Act 2012 c7; for discussion, see Economic Insight (2012) ‘A healthy debate: competition policy in publicly funded healthcare’ *European Competition Law Review*, 33(12), pp.552-555; Harris, N (2013) ‘Academies: questions and answers’, *Education Law Journal*, 14(4), pp.253-254

³⁹ Werner, P (1970) ‘Report to the Council and the Commission on the realisation by stages of economic and monetary union in the Community’ (supp to Bulletin 11), Luxembourg: Council and Commission of the European Communities

⁴⁰ Directorate General for Economic and Financial Affairs (1975) ‘Report of the study group “Economic and Monetary Union 1980”’, Brussels: European Communities Commission, 29

⁴¹ The lack of democratic legitimacy of revenue raising other than by the Parliament, and the likely reluctance of member states to cede further power from the Council to the Parliament, continue to be identified as potential obstacles to the Union taking on directly redistributive functions – see Renaud-Basso, O (2016) ‘What do we expect from an EMU stabilisation mechanism?’ (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels)

lack of control of tax-and-spend mechanisms as “an important reason why in present circumstances monetary union is impracticable” and endorses the Marjolin recommendation.⁴²

The Marjolin model of European unemployment benefit foresees a phased introduction. Initially, an identifiable portion of the employee’s social insurance contribution would be paid to a supranational fund, administered (in keeping with the corporatist model) in cooperation with social partners, with a flat-rate European benefit paid to claimants alongside their national benefit. In phase two, the European benefit would adhere more closely to the conservative model, consisting of a fixed payment plus an additional amount based on a percentage of previous wage. Phase three is described as the establishment of a “standard Community system,” but no further detail is provided. The Community fund is described as necessary on the basis that completion of the common market would lead to unemployment by encouraging regional specialisation and easing the relocation of industries, unemployment which “ought to be the responsibility of the Community,” and that *all* member states would benefit from the “cushion[ing]” of isolated economic fluctuations before contagion can occur.⁴³

Ultimately, the monetary union established after 1992 would make no provision for expansion of the Union budget or the federalisation of fiscal, economic or social security policy, in marked contrast to the contemporaneous creation of a new monetary, economic, political and social union in the reunited Germany.⁴⁴ The weakness of this model has been revealed by the post-2007 economic crisis, whose effects are widely argued to have been exacerbated by unwillingness to pool either risk or economic policy competence.⁴⁵ Arguably, Eurozone states accepted major curbs on their ability to respond to economic shocks at national level through entry to the single currency and the Growth and Stability Pact without putting in place a suitable alternative stabilisation mechanism.⁴⁶ Although supranational sharing of social risk through a common unemployment insurance system was not entirely without advocates in the pre-crisis period,⁴⁷ the subsequent search for means of enhancing the stability of the Eurozone has

⁴² Commission of the European Communities (1977) ‘Report of the study group on the role of public finance in European integration: vol 1’, Brussels: Commission of the European Communities, 9, 13

⁴³ DG Economic and Financial Affairs (1975) fn.40, 42

⁴⁴ Andor, L (2014) ‘Social dimension of the Economic and Monetary Union: what lessons to draw from the European elections?’ (lecture at Hertie School of Governance, Berlin). Retrieved July 2016 from http://europa.eu/rapid/press-release_SPEECH-14-455_en.htm

⁴⁵ Lane, PR (2012) ‘The European sovereign debt crisis’, *Journal of Economic Perspectives*, 26(3), pp.49-68; European Commission (2012) ‘A blueprint for a deep and genuine economic and monetary union’ (COM(2012) 777 final/2); Allard, C, Koeva Brooks, P, Bluedorn, JC, Bornhurst, F, Christopherson, K, Ohnsorge, F, Poghosyan, T and IMF staff (2013) ‘Towards a fiscal union for the Euro area’ (SDN/13/09), Washington DC: IMF; Juncker, J-C with Tusk, D, Dijsselbloem, J, Draghi, M and Schulz, M (2015) *Completing Europe’s economic and monetary union*, Brussels: European Commission

⁴⁶ See Belke, A and Gros, D (1999) ‘Estimating the costs and benefits of EMU: the impact of external shocks on labour markets’, *Weltwirtschaftliches Archiv*, 135(1), pp.1-47; Mathieu, C and Sterdyniak, H (2013) ‘Avons-nous besoin de règles fiscales?’, *Revue de l’OFCE*, 127, pp.189-223

⁴⁷ Deinzer, R (2004) *Konvergenz- und Stabilisierungswirkungen einer europäischen Arbeitslosenversicherung*, Berlin: Duncker & Humboldt; Dullien, S (2007) ‘Improving economic stability in Europe: what the Euro area can learn from the United States’ unemployment insurance’ (WP FG1), Berlin: Stiftung Wissenschaft und Politik

brought about a revival of interest. The roots of this renewed attention can perhaps be found in the draft resolution on a Social Investment Pact tabled in 2012 by the Committee on Employment and Social Affairs.⁴⁸ This does not mention a common unemployment benefit, but does note the sharp rise in unemployment since 2008, the associated increase in poverty risks and pressure on national social assistance schemes, particularly in those states disproportionately affected by the economic crisis.

Within the EU institutions, the Committee of the Regions has taken a keen interest in the development of a single European unemployment benefit. Through its 2013 Opinion on the social investment package and its 2014 Opinion on the social dimension of economic and monetary union,⁴⁹ the Commission suggested federal subsidisation of unemployment benefit schemes in member states where unemployment exceeds an agreed level as one of a number of possible solidarity mechanisms in the event of future asymmetric economic shocks.⁵⁰ Subsequently, the European Parliament requested that the Commission conduct a pilot study of the feasibility of a single EU unemployment benefit⁵¹ and the Commissioner for Employment, Social Affairs and Inclusion endorsed the concept of a common social insurance scheme as having a “strong economic rationale.”⁵² A EUBS formed a main focus of the second of two conferences on automatic economic stabilisers hosted by the Commission⁵³ as well as attracting interest from trade unions.⁵⁴ Subsequently, during his country’s presidency of the European Council, the Slovak Minister of Finance argued that some form of automatic economic stabiliser for the Eurozone at least is no longer merely necessary, but “almost inevitable,” with EUBS one of the leading contenders for this role.⁵⁵ It would, however, be misleading to give the impression of a steady build-up of momentum in favour of supranational social security: the European People’s Party, the largest in the European Parliament, remains opposed to its introduction⁵⁶ and a European unemployment benefit is not mentioned in the

⁴⁸ Committee on Employment and Social Affairs (2012) ‘Motion for a European Parliament resolution on the Social Investment Pact – as a response to the crisis’ (A7-0263/2012)

⁴⁹ Committee of the Regions (2013) ‘Opinion – the EU social investment package’ (2013/C 356/11) para 20; Committee of the Regions (2014) ‘Opinion – the social dimension of the economic and monetary union’ (2014/C 126/08) para 46

⁵⁰ European Commission (2013) ‘Strengthening the social dimension of the economic and monetary union’ (COM(2013) 690) 11

⁵¹ Andor, L (2013) Joint answer to written question E-012088/13

⁵² Andor (2014) fn.44

⁵³ Economic shock absorbers for the Eurozone: deepening the debate on automatic stabilisers, Brussels, June 2014. Retrieved July 2016 from <http://ec.europa.eu/social/main.jsp?langId=en&catId=88&eventsId=992&furtherEvents=yes> accessed 19 February 2016

⁵⁴ European Trade Union Institute (2015) ‘Towards a desirable and feasible European unemployment benefit scheme’ (news release). Retrieved July 2016 from <http://www.etui.org/News/Towards-a-desirable-and-feasible-European-unemployment-benefit-scheme>

⁵⁵ Kažimír, P (2016) Opening speech (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels)

⁵⁶ European People’s Party (2013) ‘Strengthening the social dimension of the Economic and Monetary Union. Balance between EU and Member States shall be ensured’ (press release). Retrieved July 2016 from <http://www.eppgroup.eu/press-release/Strengthening-the-social-dimension-of-the-EMU>

Commission's initial proposals for a new "pillar of social rights."⁵⁷ Potential constitutional impediments have been identified in member states including the Netherlands, France, Germany, Luxembourg and Finland and would need to be addressed for any proposed scheme to proceed.⁵⁸

Proponents of EUBS tend to foreground its role as an automatic economic stabiliser and cushion against asymmetric shocks. A supranational benefit is advanced as a better means of delivering these functions than transfers between the Union and member states with high levels of unemployment⁵⁹ because the response to rising unemployment is automatic, instant, predictable and guaranteed to put cash into citizens' pockets rather than being used for deficit reduction or other spending that is "not necessarily supportive of economic or social goals."⁶⁰ Dullien suggests a European unemployment insurance scheme could have reduced the three-year impact of the downturn by 18% in Spain, seven per cent in Ireland and five per cent in Greece without incurring any "real economic costs."⁶¹ A pure supranational unemployment insurance system could also have a longer term equalising function between member states where economic performance differs. However, EUBS is intended to facilitate short-term smoothing, not long-term redistribution. 'Experience rating' and 'claw-back' mechanisms are proposed as alternative means of increasing contributions to the supranational fund from member states that have higher-than-average short term unemployment rates and have therefore been net beneficiaries, whether through higher employee contributions (experience rating) or direct transfers from governments (claw-back). In the long term, these mechanisms are designed to ensure that EUBS does not result in net transfers between member states. One aim is to avoid the risk of institutional moral hazard whereby the tier of government that controls the policy instruments for stimulating employment and claimant activation may be tempted to reduce investment in such measures because much of the cost of unemployment is borne by a separate tier of government.⁶² While such protections may be the price of political buy-in from those states that might otherwise anticipate being net contributors, they do limit the overall contribution of EUBS to cross-border solidarity.

The main features of the proposed EUBS are as follows:

⁵⁷ European Commission (2016) 'First preliminary outline of a European pillar of social rights' (COM(2016) 127 final), Brussels: European Commission, annex 1

⁵⁸ Coucheir & others (2016) fn.17, 14

⁵⁹ This approach is advocated in a number of proposals from the 1990s and 2000s – see Jara and Sutherland (2014) fn.16

⁶⁰ Bontout, O and Lejeune, G with Ciesielska, M and di Girolama, R (2013) 'Paper on automatic stabilisers', Brussels: European Commission, 6-7

⁶¹ Dullien, S (2012) 'A European unemployment insurance as a stabilisation device – selected issues' (paper for DG EMPL workshop, Brussels) 7-8. Retrieved July 2016 from <http://ec.europa.eu/social/BlobServlet?docId=10437&langId=en>

⁶² Vandenbroucke, F and Luigjes, C with Wood, D and Lievens, K (2016) 'Institutional moral hazard in the multi-tiered regulation of unemployment and social assistance benefits and activation: a summary of eight country case studies', Luxembourg: European Union

- **Qualifying period:** eligibility would be on the basis of full time equivalent (FTE) employment for a minimum period – either three of the last 12 months, three of the last six months or 12 of the last 24 months. If a claim were ended by return to employment before the eligibility period had expired, a new qualifying period would begin – an equivalent to the UK's 'linking period', which allows a claim to be resumed after a short period in employment,⁶³ is not envisaged.
- **Duration of payment:** two proposed variants envisage EUBS payments commencing from the fourth month of unemployment for a period of either three or nine months; a third would see the benefit paid for the first 12 months of unemployment.
- **Replacement rate:** EUBS would be equivalent to 35%, 50% or 60% of the claimant's reference wage (earnings when last in employment), capped at 50%, 100% or 150% of the national average wage; an alternative variant would allow member states whose social security systems do not use a reference wage to operate a flat-rate EUBS.
- **Funding and administration:** EUBS would be funded by a combination of employee and employer contributions, collected through national infrastructure for social insurance contributions. The benefit would also be paid through national social security agencies.

Two broad models are proposed – a basic EUBS, in which payments to the claimant during the eligibility period would be from the supranational fund in the first instance, with a top-up from the national agency in the event that national benefits are higher, or a top-up EUBS, in which payments would be from the national agency in the first instance with a top-up from the supranational fund if EUBS entitlement is greater than national entitlement. Although the alternative systems would pose different administrative challenges, there ought to be no difference in the amount of benefit ultimately paid to the claimant.

The proposed benefit can be situated within the conservative 'world of welfare capitalism' in which those who demonstrate "moral desert" through labour market participation have a considerable percentage of their income guaranteed, for a limited period, should they become exposed to social risk.⁶⁴ Consequently, the welfare state plays little role in "social levelling" – the best-paid worker will receive the highest benefits should he or she become unemployed (subject to the cap established, typically between 50% and 100% of the average national wage), hence social hierarchies in the labour market are to some extent preserved among the short-term unemployed.⁶⁵ The administration of contributions and payments through the state apparatus without involving social partners means EUBS is an example of the conservative welfare state in its statist, rather than corporatist, form. Although the proposed benefit is typically referred to as an economic stabiliser, it is not, therefore, unreasonable to suggest that it could equally serve as a means of binding citizens to the EU, cementing an "ever closer

⁶³ Jobseeker's Allowance Regulations 2013 no 378 reg 39

⁶⁴ Esping-Andersen (1990) fn.21, 40-41

⁶⁵ Esping-Andersen (1990) fn.21, 58

union”⁶⁶ in the same way that Bismarckian social insurance schemes sought to secure loyalty to the new German Empire⁶⁷ – especially if, as in Jara and Sutherland’s simulation, EUBS were to result in higher incomes for a significant percentage of claimants.⁶⁸ On the other hand, social partners with a role in administering national benefits might become a source of opposition to Europeanisation of unemployment insurance.⁶⁹

The contributory principle and the winning of citizens’ loyalty through welfare provision are not, of course, alien concepts to UK social policy. The welfare state is constructed as a, if not the, central element of the architecture that holds together the ‘state of unions’ – “what the union does” for Scotland, Wales and Northern Ireland.⁷⁰ The outcome of the ‘Brexit’ referendum has raised a bigger question for Scotland and Northern Ireland in particular on the state of the union, but even without this pressure, in the devolution era, where many aspects of welfare provision have already become regionalised,⁷¹ the social security system stands alongside the taxation system as the most important remaining manifestation of the social union.⁷² In his recommendations for the post-World War 2 reform of social insurance, Beveridge argued that “benefit in return for contributions, rather than free allowances from the State, is what the people of Britain desire.”⁷³ However, although contribution was to be the basis for *entitlement* in the Beveridgean system, the benefits themselves were to be flat-rate, not linked to previous earnings, and the role of contribution has tended to decline.⁷⁴ Conservative welfare states tend to adhere more closely to the social insurance principle, which is enshrined in the constitutions of Germany and Austria.⁷⁵

⁶⁶ Consolidated version of the Treaty on European Union 2012/C 326/01, preamble

⁶⁷ Turner, B (1992) ‘Outline of a theory of citizenship’ in Mouffe, C (ed), *Dimensions of radical democracy: pluralism, citizenship, community*, London: Verso; Rosenhaft, E and Lee, WR ‘State and society in modern Germany – Beamtenstaat, Klassenstaat, Sozialstaat’ in Lee, WR and Rosenhaft, E (1997) *State, social policy and social change in Germany 1880-1994*, Oxford: Berg

⁶⁸ Jara and Sutherland (2014) fn.16

⁶⁹ Coucheir & others (2016) fn.17, 77

⁷⁰ Lodge, G and Trench, A (2014) *Devo more and welfare: devolving benefits and policy for a stronger union*, London: IPPR, 6; see also Mooney, G and Williams, C (2006) ‘Forging new “ways of life”? Social policy and nation building in devolved Scotland and Wales’, *Critical Social Policy*, 26(3), pp.608-629

⁷¹ Welfare Funds (Scotland) Act 2015 asp 5; Scotland Act 2016 c11; Welfare Reform Mitigations Working Group (2016) *Welfare Reform Mitigations Working Group Report*, Belfast: OFMDFM; for discussion, see Simpson, M ‘The social citizenship of lone parents, 2010-2015: evolution and devolution’ (PhD thesis, Ulster University)

⁷² Birrell, D (2010) ‘Devolution and approaches to social policy’ in Lodge, G and Schmucker, K (eds), *Devolution in practice 2010*, London: IPPR; Simpson, M (2016) ‘The social union after the coalition: devolution, divergence and convergence’, *Journal of Social Policy* FirstView article. Retrieved July 2016 from <http://dx.doi.org/10.1017/S0047279416000568>

⁷³ Beveridge (1942) fn.32, para 21

⁷⁴ Social Security Committee (2000) *The contributory principle* (HC56-I), London: House of Commons; Brewer, M, Clark, T and Wakefield, M (2002) ‘Social security under New Labour: what did the third way mean for welfare reform?’, London: Institute for Fiscal Studies

⁷⁵ Coucheir & others (2016) fn.17

3. Implementing a EUBS in the UK

3.1 EUBS and UK unemployment benefits: a comparison

Three forms of unemployment benefit currently exist in the UK: contributory jobseeker's allowance (CJSA), income based jobseeker's allowance (IBJSA) and universal credit (UC). CJSA is a social insurance benefit in the sense that eligibility depends on a minimum level of national insurance contributions (or a combination of contributions and credits) in a two-year qualifying period. However, unlike the typical conservative social insurance benefit, the allowance is paid at a flat rate, with no adjustment of its value to reflect the claimant's previous earnings. Since the level of CJSA is equivalent to the personal allowance received by claimants of IBJSA and the standard allowance element of UC, the advantages conferred upon the claimant by contribution in comparison to the alternative unemployment benefits are limited to the absence of means testing, calculation of eligibility on an individual (rather than household) basis and the relaxation of jobseeking conditionality for the first three months of the claim.⁷⁶ In principle, the benefit is financed by employee and employer contributions into the national insurance fund, although in the event that payments out of the fund exceed revenues the shortfall may be topped up from general taxation.⁷⁷ IBJSA, which continues to be available for a transitional period following the Welfare Reform Act 2012, is an unemployment assistance benefit, paid on a means-tested basis to individuals or couples with little or no income or savings and who meet strict jobseeking conditions. Expenditure on IBJSA is more than seven times that on the contributory benefit.⁷⁸ UC is a general social assistance benefit payable to various categories of claimants. Conditions for receipt vary for different claimant groups, but for the unemployed the only real differences compared to IBJSA are the payment arrangements and the introduction of a new system of tapered withdrawal on entry to employment, the latter designed to ensure low paid work results in a net financial gain.

As outlined in section 2, EUBS as currently proposed is a classic conservative social insurance benefit, with both eligibility and the level of benefit paid to an individual claimant calculated on the basis of recent employment record. Although *eligibility* for CJSA is likewise established according to social insurance principles, previous earnings have no impact on level of benefit and most jobseekers receive benefits on the basis of means testing and compliance with applicable conditions.⁷⁹ Even for those on the contributory path, the basis for eligibility differs to that proposed for EUBS. Whereas EUBS eligibility is on the basis of *hours worked* during the reference period, CJSA is awarded on the basis of *national insurance contributions made*

⁷⁶ For the first three months of a CJSA claim, the claimant may restrict jobseeking to "work of a similar nature, or level of remuneration" to that previously held – Jobseeker's Allowance Regulations 2013 no 378 reg 14

⁷⁷ Social Security Act 1993 c3 s2

⁷⁸ Department for Work and Pensions (2016) 'Official statistics: benefit expenditure and caseload tables 2016', London: DWP. Retrieved July 2016 from <https://www.gov.uk/government/statistics/benefit-expenditure-and-caseload-tables-2016>

⁷⁹ In 2014-15, the total jobseeker's allowance caseload was 898,000, of which 723,000 claimants received IBJSA only – see DWP (2016) fn.78

and hence of earnings in the two-year reference period. Higher earners can therefore pass the threshold of eligibility in a much shorter period of time. So whereas a low earner would require an income at the primary threshold (£155 in 2016-17) for 25 weeks and either earnings at the lower earnings limit (£112) or a benefit that gives access to national insurance credits for a further 75 weeks, an individual whose earnings are at or above the upper earnings limit (£827) could make the qualifying level of NICs in 9.5 weeks in each of the two years.⁸⁰

A second significant difference concerns the level of benefit. As noted, CJSA is paid at a flat rate – £73.10 per week in 2015-16. For single claimants, the basic rate of IBJSA is also £73.10 per week, that of UC £317.82 per month, although these may be reduced if the household has savings or other sources of income. Since EUBS payments would be based on the claimant's income when last employed, these would be variable, but for some could be considerably higher than current flat rate benefit payments. The EUBS variants in the feasibility study propose alternative replacement rates of 35%, 50% or 60% of the reference wage. By way of comparison, in 2013-14 JSA for a single claimant was equivalent to a replacement rate of 30% compared to full-time employment at the national minimum wage, 24% compared to equivalised median income for a single person⁸¹ or 14% compared to median gross full-time earnings.⁸² It should, however, be noted that claimants with dependents or housing costs would receive additional social assistance payments towards these expenses, making direct comparison difficult.

Other differences between the two systems can be summarised briefly. EUBS would be payable for a period of three to twelve months depending on variant; CJSA is paid for six months, while IBJSA and UC are of indefinite duration. Where a claimant enters low-paid, low-hours employment, JSA or UC may continue to be paid subject to deduction of an amount equivalent to most of the claimant's other earnings, whereas the feasibility study was conducted on the basis that EUBS would *not* be payable in the event of "partial unemployment." Similarly, whereas a claim for JSA may be resumed following a short period of employment (up to 12 weeks), *any* interruption of a EUBS claim would have the effect of restarting the qualifying period,⁸³ so that no new claim could be lodged until the qualifying period of FTE employment had been completed again, potentially up to two years.

3.2 Legal and operational feasibility

National feasibility studies for EUBS consisted chiefly of an assessment of any legal and operational barriers to its implementation at the member state level. In the UK, for as long as it remains part of the European Union, few major legal obstacles exist. Potential question marks

⁸⁰ See Jobseekers Act 1995 c18 s2

⁸¹ Shale, J, Balchin, K, Rahman, J, Reeve, R and Rolin, M (2015) *Households below average income: an analysis of the income distribution 1994/95-2013/14*, London: DWP

⁸² Office for National Statistics (2015) 'Annual survey of hours and earnings, 2014 provisional results', Newport: ONS

⁸³ Jobseeker's Allowance Regulations 2013 no 378 reg 39

hang over the compatibility of EUBS with the proposed legal requirement for a public surplus during periods of economic growth⁸⁴ and the inability of the national insurance fund to borrow. However, the details of any possible mandatory surplus remain unclear and there has not thus far been any indication that fiscal policy would be subject to any such constraint in periods when the economy does *not* grow, when the balance of EUBS payments may be more likely to be in deficit. Further, the national insurance fund is protected from insolvency by the ability of Parliament to make top-up payments.⁸⁵

Further legal issues concern the fit of elements of EUBS as proposed with UK equality legislation⁸⁶ and the non-discrimination provision in article 14 ECHR. This applies first to the basing of eligibility for the benefit on a minimum period of FTE employment, as members of protected groups – notably women – who are more likely to work part time might be less able to meet the requirements of the qualifying period. Equality issues might also be raised by a requirement to recommence the qualifying period after *any* interruption of claim. Although the standard 'linking period' rule in CJSA treats two periods in receipt of benefit as a single claim as long as the interruption is under 12 weeks, this may be extended if the claimant is in receipt of maternity allowance, carer's allowance or training allowance or is incapable of work.⁸⁷ Less favourable treatment of maternity and disability in any new unemployment benefit compared to JSA could result in an application for judicial review. In Scotland in particular, where devolved powers have brought new competencies in disability benefits, any discriminatory treatment in this area would go against the Scottish government's policy intent to improve benefit provision for the disabled.⁸⁸ Coucheir and others note that some national social security systems (Belgium and Denmark, for example) provide that incapacity benefits should be no lower than unemployment benefits and suggest that this principle could be extended to ensure relevant benefits match the level of EUBS if it is higher.⁸⁹ While this would avoid the problem of less favourable treatment of people who are outside the labour market for health reasons, it is unlikely to appeal to UK policymakers due to the likely increase in expenditure it would require in comparison to employment and support allowance.⁹⁰

Operation and administration of EUBS in the UK poses more significant problems. First, the qualifying period for EUBS is calculated on a wholly different basis to that for contributory

⁸⁴ Osborne, G (2015) 'Annual Mansion House speech by Chancellor of the Exchequer, RT Hon George Osborne MP', London: HM Treasury. Retrieved July 2016 from <https://www.gov.uk/government/speeches/mansion-house-2015-speech-by-the-chancellor-of-the-exchequer>

⁸⁵ Social Security Act 1993 c3 s2

⁸⁶ Northern Ireland Act 1998 c47 s75; Equality Act 2010 c15 s13-19, 149

⁸⁷ Jobseeker's Allowance Regulations 2013 no 378 reg 39

⁸⁸ Scottish Government (2015) *Creating a fairer Scotland: social security – the story so far and next steps* Edinburgh: Scottish Government

⁸⁹ Coucheir & others (2016) fn.17, 48

⁹⁰ ESA, the UK's national incapacity benefit, is payable at the same rate as JSA (£73.10) for an initial 13-week period, after which a top-up of £29.05 or £36.20 applies depending on the extent of the claimant's incapacity for work. The highest possible payment is therefore equivalent to a replacement rate of 41% compared to full time employment at the national minimum wage (2016).

jobseeker's allowance in the UK. Assessment of eligibility for EUBS on the basis of months of FTE employment would require information on duration of employment and hours worked that is not currently collected. To gather this information would not be impossible, but would represent an additional administrative burden on employers and the statutory agencies responsible for social security. The approach to establishing eligibility might also result in a small increase in the number of people entitled to unemployment benefits if eligibility were to extend to individuals with an amount of savings that would disqualify them from national benefits. Any issues of capacity thus created are likely to be minor, but the extent to which a more generous unemployment benefit might increase uptake among higher earners who had not previously deemed it worthwhile to claim is harder to predict.⁹¹ Although duration of employment is the more common approach to establishing entitlement in other member states, the UK would not be alone in having to calculate eligibility for EUBS on a different basis to its national system: the required contribution period can vary dramatically, from 13 weeks in Italy to 24 months in Slovakia. In some states the picture is further complicated by age-related requirements, extension of the reference period in which contributions must be made due to (for example) military service or childbearing, or by rules relating to longer term labour market attachment.⁹² In others, EUBS would increase the administrative burden on statutory agencies for other reasons, for example because membership of unemployment insurance schemes is voluntary (Denmark) or administration is largely by social partners (France).

Calculating the level of EUBS on the basis of previous earnings would be unique in the context of the UK social security system⁹³ and would hence pose new administrative demands. At present, unemployment benefits are composed of a flat-rate basic element (personal or standard allowance) with top-ups for dependents and disability, supplemented by social assistance benefits towards housing costs or local taxes. Establishment of a reference wage, on the basis of which an individual's unemployment benefit would be calculated, would require information not currently collected by the departments responsible for social security (Department for Work and Pensions in Great Britain, Department for Communities in Northern Ireland). More comprehensive details of individual incomes *are* gathered by HM Revenue and Customs for the calculation of income tax and national insurance liabilities and could conceivably be shared with social security agencies. However, past experience with tax credits suggests efficient data sharing between these branches of government cannot be taken for granted.⁹⁴ The UK is not alone in operating a flat-rate unemployment benefit: Ireland, Malta and Poland also do so and may be expected to face similar administrative challenges. The

⁹¹ This is identified by Coucheir & others (2016) fn.17, 44 as an issue for Poland, but in principle could also apply to the UK

⁹² Coucheir & others (2016) fn.17, 27

⁹³ Although previous experiments with earnings-related benefits have occurred, for example the state earnings-related pension scheme

⁹⁴ Godwin, M and Lawson, C (2009) 'The Working Tax Credit and Child Tax Credit 2003-08: a critical analysis', *Benefits*, 17(1), pp.3-14; Millar, J (2011) 'Tax credits: a close-up view', *Journal of Poverty and Social Justice*, 19(1), pp.39-50

problem might be avoided if, as has been suggested, EUBS were paid at a flat rate in member states where unemployment benefits work on this basis, although this might raise questions of whether a truly European benefit was being established. Even in the many member states where the level of benefit is based on a reference wage, some additional information might need to be collected when employees leave work as the calculation is more often based on average income over a period ranging from three months to four years than on the last wage received, as in the EUBS proposal.

Portability of the benefit would create a bigger challenge; not only could this extend eligibility to individuals with *no* right to social protection in the UK,⁹⁵ it would be necessary to share information with statutory agencies in other member states in order to establish that the qualifying condition had been met, as well as the relevant reference wage. If information sharing between UK agencies for the purpose of calculating tax credit entitlement has been problematic, even greater difficulties may be anticipated if cooperation between member states is required.⁹⁶ Payment of benefit on the basis of a reference wage established through employment in another member state could also result in a far higher or lower benefit payment than would be the case had the reference wage been established through comparable employment in the UK. Although a cap on payments would mitigate the extent to which these were disproportionately high, EEA migrants' ineligibility for UC means a very low payment could not be topped up with social assistance. This would mean inequality of opportunity to exercise the right to freedom of movement if one's last employment were in a member state with lower wages.

A further administrative challenge would be created in the UK and elsewhere if, as in some of the proposed models in the feasibility study, EUBS entitlement did not commence until the third month of unemployment. This would mean that a claimant who ended up being unemployed for a significant period might initially receive CJSA, then switch to EUBS, later reverting to a national benefit. This double transition could be easily avoided if EUBS were awarded from the start of the period of unemployment, but this might in turn raise questions over the future of CJSA. It might be deemed more efficient for claimants to claim EUBS first and then transfer to IBJSA or UC once eligibility were exhausted, especially if (as in two of the three variants in the feasibility study) duration were longer than CJSA. The national

⁹⁵ Non-UK nationals' access to social assistance is restricted by the Universal Credit (EEA Jobseekers) Amendment Regulations 2015 no 546, while eligibility for IBJSA is dependent on three months' habitual residence and lapses after six months of unemployment in the absence of "compelling evidence" that there is a "genuine chance" of securing employment – Jobseeker's Allowance (Habitual Residence) Amendment Regulations 2013 no 3196; Immigration (European Economic Area) (Amendment) (No 2) Regulations 2013 no 3032

⁹⁶ The Belgian Minister of Employment has noted the difficulties associated with cooperation on social protection between tiers of government in a single member state – Peeters, K (2016) 'What specific advantages would we expect from a European unemployment insurance as a stabilisation mechanism?' (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels, July)

feasibility studies found such “system shifts,” with attendant income fluctuations, likely to occur in various member states.⁹⁷

3.3 Political feasibility

If the legal and operational barriers to a single unemployment benefit in the UK need not have been insurmountable had voters elected to remain within the EU, political objections would almost certainly have been harder to overcome. Further EU competence creep, a new solidarity mechanism with other member states and an extension of migrants’ social security entitlements would probably have been unwelcome in the aftermath of the ‘Brexit’ referendum. Even advocates of continued membership rejected the EU’s core aspiration of ever closer union and argued that national parliaments’ supremacy must be restored.⁹⁸ On the other side, an infinitely increasing ticker representing the amount of money transferred from the UK to the Union was the first thing to greet visitors to the ‘Vote Leave’ website.⁹⁹ That the latter issue, at least, is not unique to the UK is emphasised by the stress placed on the need to *avoid* permanent transfers between member states by speakers at the 2016 conference on EUBS, who included various national Finance and Labour Ministers.¹⁰⁰

Even discounting questions of competence creep and supranational solidarity, the nature of the proposed benefit itself presents a formidable obstacle to its successful implementation in the UK. At heart, EUBS and the UK social security system are based on fundamentally different ideologies of welfare. The contrast between a national system of flat-rate, normally social assistance benefits and the proposed European system of earnings-related social insurance benefits is stark. The low level of unemployment benefits in the UK (as in Malta and Poland) reflects “the fundamental philosophy” of the liberal welfare state,¹⁰¹ not only reflecting desire to control costs, but forming part of a package of measures designed to maintain work incentives, alongside responsiveness to fluctuations in earnings and flexibility to accommodate rapid transitions in and out of work. EUBS as proposed has not been designed with these objectives in mind and would consequently be a very poor fit with the UK’s strict conditionality regime. Conditionality in the UK includes a strict sanctions policy and there would be significant operational barriers to setting up a monitoring and sanctioning mechanism for an EUBS, to the extent that compatibility across member states would be compromised leading to inconsistencies that would cut across UK policy intent. The design of EUBS is more in keeping with a German-style conservative system in which the conditionality regime for claimants of

⁹⁷ Coucheir & others (2016) fn.17, 50

⁹⁸ Conservatives In (2016) ‘Conservatives In: join the campaign’, London: Conservatives In. Retrieved July 2016 from <http://www.conservatives.in/>

⁹⁹ Vote Leave (2016) ‘Vote Leave, take back control’, Lambeth: Vote Leave, 2016. Retrieved April 2016 from <http://www.voteleavetakecontrol.org/>

¹⁰⁰ For example, the Italian Minister of Economy and Finances stated that EUBS should be an “efficiency instrument” and not a “solidarity instrument” – Padoan, PC (2016) ‘What specific advantages would we expect from a European unemployment insurance as a stabilisation mechanism?’ (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels)

¹⁰¹ Coucheir & others (2016) fn.17, 41

time-limited insurance benefits is more relaxed than that for claimants of assistance benefits. A different kind of clash of values can be seen when the horizontally redistributive EUBS, lacking any income floor, is compared to Denmark's generous but non-contributory social assistance provision, which affords greater priority to vertical redistribution and the reduction of social inequality.¹⁰²

That paid employment should be the "best route out of poverty" has long been a core tenet of UK welfare policy.¹⁰³ Although this does not imply that employment always does offer a route out of poverty,¹⁰⁴ it is common ground across the political spectrum that "the priority for social security policy must be to 'make work pay'."¹⁰⁵ The election of the coalition government in 2010 brought a redoubling of emphasis on ensuring not only that employment is more lucrative than unemployment, but that each additional hour worked always results in extra income.¹⁰⁶ Any job, however low paid, whatever the hours, temporary or permanent, is preferable to no job. With the exception of the first three months of a CJSA claim, therefore, an unemployment benefit claimant must be prepared to apply for and accept any job within a reasonable commuting distance – including, with the introduction of UC, employment on a zero hour contract.¹⁰⁷ Refusal of a position deemed suitable by a Jobcentre Plus or Social Security Agency advisor can result in loss of benefit for 13, 26 or 156 weeks under the stiffened sanctions regime introduced in 2012.¹⁰⁸ These policy priorities are reflected in the continued payment of some unemployment benefit to people with a low number of hours of low-paid work, the 'linking period' that allows easy resumption of a JSA claim after a short period of employment and, under UC, real-time adjustment of benefit payments in response to fluctuating monthly earnings.

No such flexibility exists in EUBS, which starts from the premise that an individual is either unemployed, or they are not. Entry to any employment, at any number of hours, of any duration would result in loss of benefit and recommencement of the qualifying period. In a conservative system, this would not matter: an objective of social security is to maintain social stratification by providing a high replacement rate and giving the claimant time to find a job at or near the level of remuneration to which he or she is accustomed. In Germany, often cited as the paradigmatic conservative welfare state, claimants of Arbeitslosengeld (the main unemployment insurance benefit) need not apply for or accept any job paying less than the

¹⁰² Coucheir & others (2016) fn.17, 44

¹⁰³ Department for Work and Pensions (2010) *Universal credit: welfare that works* (Cm 7957), London: DWP

¹⁰⁴ Gottfried, G and Lawton, K (2010) *In-work poverty in the recession*, London: IPPR

¹⁰⁵ Rahilly, S (2004) 'Housing benefit and work disincentives', *Industrial Law Journal*, 33(1), pp.81-86, 81

¹⁰⁶ For discussion of the likely success of reforms under the coalition in achieving this end, see Brewer, M, Browne, J and Jin, W (2011) *Universal credit: a preliminary analysis* (BN 116), London: IFS

¹⁰⁷ McVey, E (2014) Letter to Sheila Gilmore MP. Retrieved July 2016 from www.sheilagilmore.co.uk/wp-content/uploads/2014/03/GILM0200202140092020020092.pdf

¹⁰⁸ Jobseeker's Allowance Regulations 1996 no 207 reg 69-69B, as amended by Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012 no 2568 reg 2; Universal Credit Regulations 2013 no 376 reg 101-105; Jobseeker's Allowance Regulations 2013 no 378 reg 17-21

level of benefit received, which is set at a replacement rate of at least 60% of previous earnings, for the duration of eligibility, which for most claimants is six to 12 months.¹⁰⁹ However, in a system that otherwise works according to liberal principles, where rapid return to employment is the overriding priority, problems result. The potentially high level of EUBS, its cliff-edge withdrawal on entry to any employment and the prospect of a lengthy qualifying period before eligibility resumes collectively have potential to have a significant negative impact on work incentives. If the carrot to enter employment is absent, the stick is still present – it is proposed that national conditionality rules should apply to EUBS. So even if acceptance of a short-term or low-paid position would run contrary to a claimant's medium-term financial interests, as EUBS payments would be forfeited and could not be resumed for up to two years, *refusal* of the position could result in an immediate financial sanction.

EUBS as envisaged not only contrasts with the UK system in its generosity, but is a poor fit with the UK conditionality regime and with the 'churn' effect associated with low paid work.¹¹⁰ Ultimately, it therefore falls foul of Dullien's golden rule for political acceptability, namely that any new European benefit "should aim at not changing the individual incentives not to seek new employment (or to delay re-entrance into the labour market) beyond the incentives already arising from the national UI systems nor should it lower the overall generosity of social transfers."¹¹¹ In the UK, EUBS *could* reduce work incentives, both through its greater generosity compared to JSA and its incompatibility with national welfare-to-work policy. However, this mismatch of conditionality rules and the workings of the unemployment benefit was not only identified as an oversight in the UK feasibility study. Incorporation of a linking period is "fairly common" and increasingly widespread in national systems, including those based on conservative principles, with France a relatively recent adopter among the latter group. The synthesis report hence concludes that "non-recognition of maintenance of rights by the EUBS might be a poor fit with national activation policies."¹¹² Although, as noted in section 2, introduction of EUBS could in principle reduce national governments' incentive to invest resources in claimant activation for the recently unemployed, as a large share of the cost of short-term unemployment would be borne by the supranational scheme¹¹³ – thereby reducing

¹⁰⁹ The replacement rate is 67% for claimants with dependent children, and eligibility periods can be longer for those aged 50 and older with long contribution records; prior to the Hartz IV reforms, claimants could turn down any job paying less than 80% of previous income for the first three months and less than 70% for the subsequent three months – see Mohr (2007) fn.7; Bundesministerium für Arbeit und Soziales (2013) *Soziale Sicherung in Überblick*, Bonn: Bundesministerium für Arbeit und Soziales

¹¹⁰ Evans, PM (2007) '(Not) taking account of precarious employment: workfare policies and lone mothers in Ontario and the UK', *Social Policy and Administration*, 41(1), pp.29-49; Lawton, K (2009) 'Tackling in-work poverty', *Poverty*, 135, pp.5-8; Lancker, W van (2012) 'The European world of temporary employment: gendered and poor?', *European Societies*, 14(1), pp.83-111

¹¹¹ Dullien (2007) f.47, 33

¹¹² Coucheir & others (2016) fn.17, 48

¹¹³ Vandenbroucke and others (2016) fn.62

the incongruity – such a radical reversal of UK policy evolution since at least 1996 appears unlikely.¹¹⁴

It is an irony of social protection in the UK that while authors from Beveridge onward have asserted a public preference for the contributory principle,¹¹⁵ in practice its importance has tended to decline.¹¹⁶ A radical shift from residualism towards a more explicitly contributory system was identified prior to the 2014 referendum as one of two possible long-term directions for social security in an independent Scotland.¹¹⁷ Such a transition to a more conservative approach might have been a better fit with EUBS as proposed, and Scotland's portrayal as more pro-Europe than England¹¹⁸ implies it might have been more willing in principle to embrace *any* supranational welfare system than the UK as a whole. However, the victory of the unionist side in the Scottish independence referendum means these assumptions will not be put to the test for the foreseeable future.

Conclusion

While there are some concerns over the likely equality impact of EUBS as currently proposed, from a legal perspective there were few major obstacles to its implementation in the UK prior to the state's decision to leave the EU. The greater challenges would be administrative and above all political, in both cases due to the difficulty of appending a conservative social insurance benefit to a liberal social protection system in which working age provision is dominated by ungenerous social assistance benefits and contribution plays a limited role. Basing eligibility on hours worked (rather than earnings) in a reference period and varying the level of benefit according to recent earnings would require information not currently gathered by social security agencies. More importantly, the likely generosity of EUBS compared to JSA and its inability to respond to fluctuations in earnings, to resume after short periods of employment or to top up very low earnings mean it would grate with a strict conditionality regime that would seek to coerce claimants into moving from benefit to employment even when economically disadvantageous. This reflects a philosophical mismatch between a conservative approach that aims to support claimants back into employment at a similar level of remuneration to that previously enjoyed (underpinning EUBS) and a liberal approach whose

¹¹⁴ See Harris, N (2008) 'From unemployment to active jobseeking: changes and continuities in social security law in the United Kingdom' in Stendahl, S, Erhag, T and Devetzi, S (eds), *A European work-first welfare state*, Gothenburg: Centre for European Research

¹¹⁵ Beveridge (1942) fn.32, para 21; for more recent examples, see Saunders, P (2013) *Beyond Beveridge: restoring the contributory principle to retirement pensions and welfare benefits*, London: Civitas; O'Leary, D (2013) 'Something for something: restoring a contributory principle to the welfare state', London: Demos

¹¹⁶ Buck, T (1996) 'Jobseeker's allowance: policy perspectives', *Journal of Social Security Law*, 3(4), pp.149-64; Social Security Committee (2000) fn.73; Brewer & others (2002) fn.74

¹¹⁷ Expert Working Group on Welfare (2014) *Re-thinking welfare: fair, personal and simple*, Edinburgh: Scottish Government – the alternative suggestion was a universal system based on an unconditional 'citizen's income' for all

¹¹⁸ Eardley, N (2016) 'Is Scotland the most pro-EU part of the UK?' (BBC News). Retrieved July 2016 from <http://www.bbc.co.uk/news/uk-politics-35602861>

overriding priority is welfare to (any) work. Even more than the logistical challenges inherent in this collision of two worlds of welfare capitalism, this ideological divergence means that in the present environment the anticipated political objections to such a scheme would likely have been impossible to overcome, Brexit notwithstanding.

It is neither possible nor necessary to provide a detailed account of the individual member state feasibility studies here: the references made to the synthesis report suffice to indicate that the departure of one troublesome member state does not clear the way for EUBS. Many of the potential barriers identified in the UK can be seen in at least some of the remaining 27, and barriers not present in the UK can be seen elsewhere. As in the UK, the principal obstacles are often political rather than legal or operational. The introduction of a common social insurance benefit even in several conservative welfare states would pose problems due to differences in qualifying conditions, generosity, activation policies and administrative arrangements. These are only amplified by the addition to the mix of liberal, social democratic, southern European and post-communist welfare models. One researcher who has played a leading role in recent investigations of a possible EUBS has argued that a European scheme would be difficult to put in place without some degree of harmonisation of national systems through the adoption of common minimum standards, but that once such common standards were adopted, some form of supranational system could quickly become both necessary and inevitable.¹¹⁹ However, there is no reason to assume that political leaders are likely to agree to such convergence in the near future – if anything, the level of non-compliance with the European Social Charter provisions on social security suggests the contrary.¹²⁰ If, as some suggest, Brexit creates an opportunity to rethink the Union's role in the social realm, it may equally strengthen others' resolve to resist further intrusion on national sovereignty.

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¹¹⁹ Beblavý, M (2016) 'Design of a European unemployment benefits scheme and its dimensions: what is examined in the pilot project?' (Feasibility and added value of a European Unemployment Benefits Scheme, Brussels)

¹²⁰ In the most recent assessment of the compliance of state parties with article 12(1) ESC, of the eight EU member states assessed only Denmark was found to comply with its obligations in the reference period (2008-2011) – see European Committee of Social Rights (2013) *Conclusions XX-2 (Luxembourg, United Kingdom, Czech Republic, Greece, Poland, Spain, Denmark, Germany – article 12(1))*, Strasbourg: Council of Europe. Retrieved July 2016 from <http://hudoc.esc.coe.int>

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